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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 19~~46~~ 58 59

No. 12 ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF,

v.

STATE OF CALIFORNIA.

SUPPLEMENTAL BRIEF OF LAWRENCE WARDS ISLAND REALTY COMPANY *AS AMICUS CURIAE*

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January 1947.

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No. 12—ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF,

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SUPPLEMENTAL BRIEF OF LAWRENCE WARDS ISLAND REALTY COMPANY as Amicus Curiae, on Motion for Judgment by the United States as prayed in the Complaint on the Grounds that the purported defenses set forth in the State's Answer are insufficient in law, the cause being set down by order of the Court "for argument on the pleadings". Sup. Ct. Journal, 1945 Term, p. 269.

The question presented is what lands underlying the three mile limit within the coast of the United States and the tidelands and lands under the waters of navigable rivers are included in national sovereignty ownership of the territory acquired by the Federal Union at the time of the creation of the National Union, and also in the territory since acquired by the United States, and whether the rights to these lands now belong to the United States, or whether some portion of these lands have passed to the State of California or to other States on an "equal footing" with the Original States.

Summary of Argument.

Each member State of the Continental Congress was a complete national sovereign in itself, and took over the national sovereign property in the exterior and interior tidelands in the English Colonies from the British Crown under the Treaty of Paris in 1783, and held it until the Independent States formed the Federal Union as a complete national sovereign, and by adopting the U. S. Constitution provision of Article IV, Section 4, placing the duty on the Federal Union to protect the State members thereof against invasion, automatically transferred to the new National Sovereign all the exterior and interior tidelands of each state member and each state member of the Federal Union thereby surrendered and transferred its national sovereignty to the new federal Union by U. S. Constitutional authority. The U. S. Constitution has placed the ownership of the exterior and interior tidelands and lands under the waters of navigable rivers in the Federal Union.

ARGUMENT.

Point A.

Tidelands facing the rivers and ocean belonged to the Crown of Great Britain as a national sovereign. Under the Treaty of Paris, 1783, this national sovereign property was relinquished to each of the Thirteen Original States, the 13 Independent National Sovereigns being entitled to receive the national sovereign tidelands within the respective boundaries of each separate Original State.

Point B.

On the adoption and ratification of the United States Constitution each Independent National Sovereign State of the Thirteen Original States transferred its National Sovereignty to the Federal Union and transferred with it

the national property that belonged to a national sovereign by virtue of its rights to the lands underlying said waters of the ocean and to the tidelands and lands under the waters of navigable rivers, which lands it had received from the English Crown under the Treaty of Paris. Each Original State surrendered its national sovereignty to the Union, and retained only its local State sovereignty. Being no longer a national sovereign the State could not retain title to these national tidelands, and thereafter must re-acquire said tidelands by consent of the National Union. The adoption of Article 4 of the United States Constitution, Section 4 of which provides:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion;* * *"

placed this national sovereign obligation and duty upon the Union, and took it from the States, reducing each of the Original States to a local State Sovereign incapable of owning the title to national sovereign tidelands. The United States Constitution has made the Union the sole owner of national sovereign tideland property necessary to carrying out its duty to protect each State from invasion. Necessary means proper and suitable and does not mean indispensible. This meaning of "necessary" was urged by Hamilton. Essentials in History by Albert Bushnell Hart, Prof. of History, Harvard, American Book Co., Cinn., 1905, p. 243, and its constitutional meaning was defined in *McColloch* v. *Maryland,* 4 Wheaton, 316, in the discussion on "implied powers".

In its brief the United States here seeks to separate the lands under the marginal seas (the three mile coastal strip) from the inland riparian lands and the lands under navigable rivers. The principle of the ownership of each is the same, being based on the national ownership as belonging to the Crown at the time of the Revolution, for the reason that such ownership of tidelands and lands submerged under the waters adjacent to the coast was neces-

sary for the protection of the Kingdom. The Nation of Great Britain owned these lands throughout the English Colonies and at home, and transferred them by surrender and treaty to the Thirteen Original States as Thirteen Original Nations, and the latter in turn, each transferred its share of them to the Union. Whatever decision this Honorable Court makes as to the ownership of the lands under the marginal seas must necessarily affect the legal principle underlying the right of ownership of the title to the interior tidelands and the lands beneath inland navigable waters. The ownership of riparian lands goes with the national sovereignty as well as the ownership of the lands under the marginal seas goes with the national sovereignty.

Estoppel.

The States have issued patents to their purported tidelands since the adoption and ratification of the United States Constitution, and the patentees, and their successors in interest have relied upon these State grants, paid taxes on these lands, improved them by filling in, building wharves, bulkheads, docks, and erecting structures thereon, since 1789, without any question being made by the United States until about 1937, of the rights of the States or of their patentees or their successors in title to so develop and own these tidelands. Hearings of Committees of the Judiciary, United States Senate and House, 79th Cong. Second Sess., especially Report of American Assn. of Port Authorities, Senate Judiciary Committee, 79th Cong. 2nd Sess. p. 220, S. J. Res 48 H J Res 225, Feb. 5, 6 and 7, 1946.

The failure of the United States to question title and the reliance by innocent purchasers of tidelands originating in State grants of title clearly raises the question of estoppel, and exception should be made in handing down this Honorable Court's judgment to the general rule that estoppel may not avail against the United States. Innocent holders of title should be protected where their grants have been issued by the State, or any agency thereof, over six

years before the year 1937, at which time the question was first raised claiming title by the United States to the lands under the marginal seas or of lands beneath inland waters where the tide ebbs and flows and under the waters of navigable rivers above tidelands.

This motion for judgment on the pleadings is in effect generally to try the cause on judicial notice. It is within the powers of this Honorable Court to make its own inquiry, and the right of each justice thereof, as to what was common knowledge at the time of the Revolution. Inquiry is not confined to undisputed questions of law and fact that are presented in the pleadings. Harvard Law Journal, January 1944, p. 270/294—Judicial Notice.

Right of Title by Conquest Confirmed.

In acquiring territory in the English, Dutch and Swedish Colonial Settlements in America; the English acquired title by discovery followed by occupation to New England, Virginia, Maryland, Georgia and the Carolinas. The Dutch acquired the New Netherlands by right of discovery and occupation. The Swedes acquired the lands along the Delaware by right of conquest, and not by discovery, in 1637. During its period of occupation under the conquest, Queen Christiana of Sweden, made crown grants of land, dry as well as wet, to private parties. Original Settlements along the Delaware, Benjamin Ferris, p. 134—Deed to Captain Hans Ammundson Besk, for a tract of lands wet and dry lying in New Sweedland, Marcus Hook (translation by Charles Springer), dated August 20, 1653. (Original translation in possession of Historical Society of Pennsylvania.)

This grant was confirmed, among others, by the Treaty of surrender made by Gov. Rising to Gov. Peter Stuyvesant in 1655 when the Dutch conquered New Sweden. Original Settlements along the Delaware, Ferris, p. 96. The English in 1664 when they captured the Delaware holdings from the Dutch confirmed the private and national titles. Section 2 "Articles of Agreement" between Sir Robert Carr and the Dutch and Swedes inhabiting Delaware Bay, and

Delaware River, p. 118 Original Settlements along the Delaware, Ferris, p. 118; which reads:

> "2. That whoever or what nation soever doth submit to his majesty's authority, shall be protected in their estates, real and personal whatsoever, by his Majesty's laws and justice."

When the Dutch recaptured this territory from the English in 1673, the private titles were again confirmed, and when the territory was again taken back by the English in 1674, the private titles were again confirmed by the English.

The Treaty of Paris 1783 confirmed private titles, but transferred the lands under water belonging to the Crown of Great Britain to the National Sovereign Independent State of Delaware as one of the Thirteen Original States. The wet lands therein belonging to the State were transferred to the United States through the ratification of the Constitution of the United States by the Thirteen Independent States. Delaware was the only Original State whose lands had originally been acquired by conquest alone, but the grants of its mother country of Sweden were confirmed, thus the right of a Nation to acquire lands by conquest and deed them to individuals was constantly recognized. The Delaware titles were confirmed by each succeeding sovereign.

Conclusion

The motion for judgment should be granted except as modified to protect grantees of tidelands, lands under the marginal seas and under navigable rivers throughout the United States under patents issued by the States, and their successors in interest, where the State patents were issued over six years ago, six years being the usual period of limitation recognized in public land grants by the United States. The protection should relate back to the date of the original issue by the State or by its Commissioners of

Land Office, or other Agency, but the exception should not include or be extended to any tidelands or lands under navigable rivers purported to be acquired from any patentees of the State or from their successors in interest by adverse possession or by condemnation proceedings commenced by the State, or by any of its sub-divisions or municipal or private corporations or agencies, for adverse possession or condemnation of United States property may not avail against the United States.

Respectfully submitted,

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